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98TH CONGRESS
1ST SESSION

H. R. 3687

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To amend title 18, United States Code, to prohibit certain practices in administering and using polygraph examinations for purposes of hiring, demoting, promoting, disciplining, and dismissing employees.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1983

Mr. DERRICK introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit certain practices in administering and using polygraph examinations for purposes of hiring, demoting, promoting, disciplining, and dismissing employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) chapter 89 of title 18, United States Code, is
4 amended by adding at the end thereof the following new sec-
5 tion:

6 **“§ 1822. Polygraph examinations**

7 “(a) It shall be unlawful for any person to administer
8 any polygraph examination on behalf of any employer en-

1 gaged in any business or activity in or affecting interstate
2 commerce, or to use the results of any polygraph examination
3 so administered, for purposes of assisting any employer to
4 determine whether to hire, demote, promote, discipline, or
5 dismiss an employee if such person violates any provision of
6 subsection (b).

7 “(b)(1) For purposes of subsection (a), no person shall
8 administer any polygraph examination with respect to any
9 individual if such polygraph examination includes any inquiry
10 into—

11 “(A) any action or event which has occurred more
12 than seven years before the date on which such exami-
13 nation is administered,

14 “(B) any information, belief, or opinion held by
15 such individual about any matter involving religion or
16 about any religious organization with which such indi-
17 vidual may be affiliated,

18 “(C) any information, belief, or opinion held by
19 such individual about any matter involving race,

20 “(D) any information, belief, or opinion held by
21 such individual about any matter involving politics or
22 about any political organization with which such indi-
23 vidual may be affiliated,

24 “(E) any information, belief, or opinion held by
25 such individual about any matter involving labor or

1 employee organizations, or about any labor or employ-
2 ee organization with which such individual may be af-
3 filiated, or

4 “(F) unless sexual behavior is related to job per-
5 formance, any matter relating to sexual behavior, or
6 any sexual behavior of such individual.

7 “(2) For purposes of subsection (a), no person shall ad-
8 minister any polygraph examination to any individual unless
9 such person—

10 “(A) provides such individual, before such exami-
11 nation begins or resumes, with a verbatim statement of
12 each question such person will ask such individual
13 during such examination,

14 “(B) obtains in writing the consent of such indi-
15 vidual to participate in such examination,

16 “(C) informs such individual that no Federal law
17 requires such individual to participate in such examina-
18 tion, and

19 “(D) provides such individual with an opportunity
20 during such examination to explain any reaction of
21 such individual indicating emotional stress occurring
22 during such examination.

23 “(3) For purposes of subsection (a), no person shall—

24 “(A) refuse to provide any individual to whom an
25 examination is administered, with a copy of any report

1 or recommendation based on the results of such exami-
2 nation, and prepared for or made available to, the em-
3 ployer on whose behalf such examination is so adminis-
4 tered,

5 “(B) disclose such results, except—

6 “(i) to the individual examined, or any em-
7 ployer on whose behalf such examination is ad-
8 ministered,

9 “(ii) in any investigation by or proceeding of
10 any governmental entity, or

11 “(iii) in any investigation or proceeding relat-
12 ing to the arbitration of any labor dispute or to
13 any misconduct by such person, or

14 “(C) intentionally prepare or make available any
15 misleading, biased, or falsified report or recommenda-
16 tion in connection with such examination.

17 “(c) For purposes of this section—

18 “(1) the term ‘employer’ does not include any
19 governmental entity,

20 “(2) the term ‘polygraph’ means any instrument
21 or device which has the capacity to make a continuous,
22 visual, permanent, simultaneous record indicating at
23 least the patterns of and changes in the galvanic skin,
24 cardiovascular, and respiratory responses of an individ-
25 ual when such individual experiences emotional stress,

1 “(3) the term ‘polygraph examination’ means any
2 examination administered to an individual by the use of
3 a polygraph for the purpose of measuring or evaluating
4 the truthfulness or untruthfulness of such individual,
5 and

6 “(4) the term ‘person’ shall have the meaning
7 given it in the sixth undesignated paragraph of section
8 1 of title 1, United States Code, except that such term
9 shall not include any officer or employee of any gov-
10 ernmental entity when such officer or employee admin-
11 isters a polygraph examination in the performance of
12 his official duties.

13 “(d) Whoever knowingly and willfully violates this sec-
14 tion shall be guilty of a misdemeanor and, upon conviction
15 thereof, shall be fined not more than \$1,000, imprisoned not
16 more than one year, or both.”.

17 (b) The analysis of sections for chapter 89 of title 18,
18 United States Code, is amended by adding at the end thereof
19 the following new item:

 “1822. Polygraph examinations.”.

20 SEC. 2. Section 1822(a) of title 18, United States Code
21 (as added by the first section of this Act), shall not apply with
22 respect to any polygraph examination administered before the
23 effective date of the amendments made by the first section of
24 this Act.

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1 SEC. 3. The amendments made by the first section of
2 this Act shall take effect thirty days after the date of the
3 enactment of this Act.

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